

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CWA-10-2014-0139
)	
RIM FIRE RANCH, LLC,)	CONSENT AGREEMENT AND
)	FINAL ORDER
Emmett, Idaho)	
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“Consent Agreement”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this Consent Agreement to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (2)(B), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Rim Fire Ranch, LLC (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this Consent Agreement.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order contained in Part V of this Consent Agreement becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”).

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CWA together with the specific provisions of the CWA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States by any person, except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

3.2. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), further provides that the EPA Administrator may issue permits under the NPDES program for the discharge of any pollutant into the waters of the United States upon such specific terms and conditions as the Administrator may prescribe.

3.3. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge

of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term “navigable waters” as “waters of the United States.” 40 CFR § 122.2 defines “waters of the United States” to include waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, all interstate waters and tributaries to those waters.

3.4 Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, solid waste, biological materials and agricultural waste. Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.”

3.5 Respondent is a limited liability company and a “person” as defined in Section 502(5) of the Act, 33 U.S.C. § 1362(5).

3.6 Respondent owns approximately 400 acres of agricultural property located at or around 5888 Sandy Avenue, Emmett, Idaho 83617. Respondent farms approximately 180 acres of this property and leases approximately 30 acres to Sage Dairy, LLC for dairy operations.

3.7 An “animal feeding operation” is defined as any lot or facility where “(i) [a]nimals ... have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and (ii) [c]rops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.” 40 C.F.R. § 122.23(b)(1). An animal feeding operation that confines 700 or more mature dairy cows is a large “concentrated animal feeding operation,” 40 C.F.R.

§ 122.23(b)(4)(i).

3.8 Starting in early 2013, the operations of Sage Dairy, LLC on Respondent's property became a concentrated animal feeding operation (hereinafter "the CAFO"), as defined by 40 C.F.R. § 122.3(b)(4)(i), by confining more than 700 mature dairy cows for a total of 45 days or more in a 12-month period. Discharges from the CAFO are discharges from a point source as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

3.9 The portion of Respondent's property leased by the CAFO includes a primary waste lagoon and separation lagoon. The CAFO's operations generate manure wastes that are pushed or washed from the dairy production area into the primary waste lagoon. From the primary waste lagoon manure wastes flow through a weeping wall to the separation lagoon. The separation lagoon is connected to a surface irrigation system that is owned and operated by Respondent. At times the irrigation system pumps a mixture of irrigation water and manure waste to irrigate some of Respondent's farm fields. This mixture is "process wastewater" as defined at 40 C.F.R. § 122.23(b)(7). At times Respondent also applies solid manure waste directly to the farm fields.

3.10 Once applied to the farm fields, process wastewater runs downgrade from the initial application site across Respondent's fields. Process wastewater that is not absorbed or soaked up by the farm fields is collected in a tail-water pond that is connected to the irrigation system so that irrigation return water can be reapplied to the farm fields. At times relevant to this action, the tail-water pond shared a direct, hydrologic connection capable of exchanging water with Sand Hollow Drain adjacent to the location where Sand Hollow Drain exits Respondent's property and flows south.

3.11 Sand Hollow Drain is a ~~wastewater drainage source~~ spillway from the North Side Canal for the Emmett Irrigation District on Respondent's property. Historically it flowed through Respondent's property from approximately April to October each year. Water from this ~~wastewater~~ drainage is utilized for irrigation purposes by other downstream users before finally flowing into the Payette River. The Payette River flows into the Snake River, which flows into the Columbia River, which, in turn, flows into the Pacific Ocean. The Payette, Snake and Columbia Rivers are perennial water bodies that are susceptible to use in interstate or foreign commerce and thus are "navigable waters" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and are each a "water of the United States" within the meaning of 40 C.F.R. § 122.2. As a natural tributary with a significant nexus to the Payette River, Sand Hollow Drain is also a "navigable water" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and a "water of the United States" within the meaning of 40 C.F.R. § 122.2.

Commented [A1]: Did you really want to characterize it as a wastewater drainage? Isn't the primary purpose for irrigation? I would suggest this deletion to avoid confusion about the primary purpose.

3.12 The process wastewater applied through the irrigation system to Respondent's farms fields contains pollutants as defined in section 502(6) of the CWA, 33 U.S.C. § 1362(6), including manure wastes, fecal coliform, *e. coli*, and nutrients such as phosphorus and nitrates.

3.13 As a point source, any discharge of pollutants, including process wastewater, from the CAFO to navigable waters is prohibited by section 301(a) of the CWA, 33 U.S.C. § 1311(a), unless authorized by a NPDES permit issued pursuant to section 402 of the CWA, 33 U.S.C. § 1342.

3.14 ~~As a CAFO,~~ Respondent's application of process wastewater via the irrigation system to farm fields and subsequent collection of the return process wastewater in the tail-water pond to the extent it directly connects to the Sand Hollow Drain results in a discharge of

Commented [A2]: This qualifier at the beginning of this sentence is not accurate. As a CAFO the discharge is considered a point source subject to regulation. As you noted in our settlement discussion a smaller operation (not a CAFO) can still discharge pollutants but is not considered a point source regulated by the CWA. I tried to address your point at the end of the paragraph.

pollutants into navigable waters. ~~In 2013, Respondent became a CAFO and therefore a point source regulated by the CWA. This was not the case before Respondent became a CAFO in 2013.~~

Commented [A3]: See comment above

3.15 On or around July 17, 2014, the Idaho State Department of Agriculture (“ISDA”) was notified that irrigation tail-water mixed with process wastewater was leaving Respondent’s property. Around July 18, 2014, ISDA inspected Respondent’s property and observed what was described as irrigation tail-water mixed with process wastewater leaving Respondent’s property by way of the Sand Hollow Drainage.

3.16 At all times relevant to this action, discharges from the CAFO were not authorized by an NPDES permit. As a result, process wastewater discharges from the irrigation system and from the waste lagoons to the tail-water pond ~~would have been~~ were in violation of Section 301(a) the CWA, 33 U.S.C. § 1311(a).

Commented [A4]: This is the crux of our allegation which Rim Fire is not admitting to. I can’t water down this language. Otherwise it goes to EPA’s authority to even enter into to this settlement.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent ~~neither admits nor denies~~ the specific factual allegations contained in Section III of this Consent Agreement.

Commented [A5]: We cannot agree to this change. If Rim Fire is denying the factual allegations it is denying the basis for the agreement. Our administrative regulations at 40 CFR 22.18(b)(2) allow for consent agreements in which a Respondent admits the factual allegations or neither admits nor denies. Denying the factual basis for the order is not an option.

4.3. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent’s economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate ~~sum~~ ~~penalty~~ to settle and resolve this action is \$17,600.

Commented [A6]: We cannot agree to change this from penalty. The CWA grants EPA the authority to assess penalties not collect sums. There are other considerations with this characterization as well including tax reporting (the prohibition against deduction of penalties).

This applies to the rest of the changes from the term “penalty” below.

4.4. Respondent agrees to pay the total ~~sume~~civil ~~penalty~~ set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order contained in Part V of this Consent Agreement.

4.5. Payment under this Consent Agreement must be made by a cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Steven Potokar
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-133
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the ~~sum~~penalty assessed by this Consent Agreement in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The ~~figure~~penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.10. Except as described in Subparagraph 4.7.2, above, each party shall bear its own costs in bringing or defending this action.

4.11. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.12. The provisions of this Consent Agreement shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.13. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This Consent Agreement constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this Consent Agreement shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law, however, as it relates to the allegations at issue in this consent agreement the EPA agrees that all matters related to this matter shall be fully and finally resolved and no further action by the EPA will be brought or pursued against Respondent. This Consent Agreement does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Idaho State Department of Agriculture has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to

Commented [A7]: We cannot agree to this language. With respect to finality the first sentence makes clear that this is the final settlement for the allegations in Section III.

Also, as a reminder, during our last phone conversation we discussed that Rim Fire Ranch needs to either submit a no discharge certification addressing the requirements in 40 CFR 122.23(i) or needs to seek coverage under the CAFO general permit. Until these actions are taken the Ranch is not in compliance with the CWA. We will need some assurance of compliance before we can finalize this settlement

comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this ____ day of _____, 2014.

M. SOCORRO RODRIGUEZ
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Rim Fire Ranch, LLC, DOCKET NO.: CWA-10-2014-0139** was served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Alex Fidis
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Rim Fire Ranch, LLC
c/o Mr. Terrence Jones
Quane Jones McColl, PLLC
U.S. Bank Plaza
101 South Capitol Blvd., Suite 1601
P.O. Box 1576
Boise, Idaho 83701

DATED this _____ day of _____, 2014

Signature

Candace Smith
Regional Hearing Clerk
EPA Region 10